

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Charlotte Bismuth	Team: Team # 7	CCRB Case #: 200000898	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 02/18/2000 6:30 PM	Location of Incident: 145th Street between Broadway and Amsterdam Avenue	Precinct: 30	18 Mo. SOL 8/18/2001	EO SOL 8/18/2001	
Date/Time CV Reported Fri, 02/18/2000 7:05 PM	CV Reported At: Precinct	How CV Reported: In-person	Date/Time Received at CCRB Fri, 02/18/2000 8:43 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Michael Demarco	19007	917521	030 PCT
2. POM Osvaldo Nunez	06330	918086	030 PCT
3. Officers			
4. An officer			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Alisa Buono	25694	920060	PBMN TF

Officer(s)	Allegation	Investigator Recommendation
A.POM Michael Demarco	Abuse: P.O. Demarco drew his gun.	
B.POM Osvaldo Nunez	Abuse: P.O. Nunez drew his gun.	
C. Officers	Abuse: Officers drew their guns.	
D. An officer	Abuse: An officer searched § 87(2)(b)'s car.	

### Synopsis

On February 18, 2000, § 87(2)(b) rode as passenger in her car, with her companion, § 87(2)(b) at the wheel, and her two children § 87(2)(b) and § 87(2)(b) in the back seat. § 87(2)(b) was pulled over by P.O. Michael Demarco and P.O. Osvaldo Nuñez of the 30 Precinct for having committed two moving violations. § 87(2)(b) alleged that P.O. Demarco and P.O. Nuñez, as well as two unidentified officers who participated in the stop, approached the vehicle with their guns drawn. § 87(2)(b) also alleged that one of the unidentified officers, a female, reached into the vehicle and searched under the driver's seat.

§ 87(2)(b), § 87(2)(g)

### Summary of Complaint

On the original complaint form, which she prepared at the 30 Precinct stationhouse, § 87(2)(b) listed P.O. Demarco as the subject. She listed both of her children as witnesses, but did not note § 87(2)(b) name. § 87(2)(b) noted the time of occurrence as 6:30 p.m. § 87(2)(b) complained that four officers pointed their guns at her and her children after having stopped their vehicle for a traffic violation. She also noted that the officers were unable to open the door, because they pulled on the handles as the occupants of the car attempted to unlock the door.

§ 87(2)(b) was interviewed on March 7, 2000. On February 18, 2000, at approximately 6:30 p.m., § 87(2)(b) made a purchase in the Rite Aid Pharmacy on the southwest corner of 145<sup>th</sup> and Broadway. She had been accompanied there by her companion, § 87(2)(b) who drove § 87(2)(b)'s car, a tan four-door 1996 Oldsmobile Archiva. § 87(2)(b)'s children, § 87(2)(b), § 87(2)(b) and § 87(2)(b) sat in the back seat.

When they left the pharmacy, § 87(2)(b) drove south on Broadway to 144<sup>th</sup> Street where he made a U-turn onto the northbound side of Broadway. § 87(2)(b) then turned right onto 145<sup>th</sup> Street traveling east towards Amsterdam Avenue. When they reached the middle of the block, § 87(2)(b) noticed a marked RMP driving behind them with its lights flashing. § 87(2)(b) believed that the RMP wanted to pass her and § 87(2)(b). § 87(2)(b) was prevented from pulling to the side of the road by double-parked vehicles. Seconds later, a marked police van stopped at the intersection of Amsterdam Avenue and 145<sup>th</sup> Street, effectively blocking § 87(2)(b)'s vehicle. § 87(2)(b) noticed that the RMP did not pass her vehicle, but stopped behind it.

Two officers (later identified as P.O. Demarco and P.O. Nuñez) exited the RMP and approached § 87(2)(b)'s car. P.O. Demarco, his gun drawn and pointed toward the vehicle, approached § 87(2)(b)'s door. P.O. Nuñez, who stood on § 87(2)(b)'s side of the car, also had his gun drawn and pointed at the occupants of the vehicle. Two unidentified officers stepped out of the van, drew their weapons, and stood in front of the car.

P.O. Nuñez yelled, instructing the occupants of the car to open the doors. Other voices joined his to command the occupants to open the doors. P.O. Demarco and P.O. Nuñez pulled on the doorhandles. However, the doors on § 87(2)(b)'s car lock automatically if one attempts to pull them open while they are being unlocked. The doors reacted in this way when P.O. Demarco and P.O. Nuñez attempted to open them. Finally, the officers managed to open the doors, and holstered their weapons. P.O. Nuñez reached into the vehicle and turned off the ignition. P.O. Demarco asked § 87(2)(b) to step out of the car. § 87(2)(b) could not recall if P.O. Demarco frisked § 87(2)(b). Meanwhile, a female officer looked under the driver's seat, and pulled out a stick, which was about two inches in diameter and 15 inches long. P.O. Demarco informed the female officer and her partner that their presence was no longer needed. The unidentified officers left the scene.

P.O. Demarco requested and obtained § 87(2)(b) driver's license and the vehicle registration. P.O. Demarco and his partner returned to the RMP. A few minutes later, P.O. Demarco walked toward § 87(2)(b) who had remained standing outside of the car. P.O. Demarco issued and explained the summons. § 87(2)(b) could not hear the rest of their conversation. When § 87(2)(b) and § 87(2)(b) were allowed to leave a few minutes later, they drove to the 30<sup>th</sup> Precinct station house to file a complaint.

Once they were on the road, § 87(2)(b)'s children told her that the officers had been signaling with the lights and public address system for § 87(2)(b) to pull over.

### **Results of Investigation**

#### *Civilian Witness Statements*

§ 87(2)(b) was contacted by telephone on April 3, 2000 § 87(2)(b), § 87(2)(g). One of § 87(2)(b)'s children informed him that an RMP was signaling for them to pull over when § 87(2)(b) had already reached the middle of the block on 145<sup>th</sup> Street between Broadway and Amsterdam. § 87(2)(b) could not pull over immediately as there were cars double-parked all along the street.

When § 87(2)(b) finally brought the car to a stop, the RMP stopped behind them. P.O. Demarco and P.O. Nuñez emerged from the RMP with their guns drawn. According to § 87(2)(b), P.O. Demarco and P.O. Nuñez pointed their weapons at § 87(2)(b) and § 87(2)(b) respectively. P.O. Demarco then knocked on § 87(2)(b)'s window with his nightstick.

§ 87(2)(b) opened his door. He noticed that a marked police van had stopped in front of the car. § 87(2)(b) did not interact or observe the officers who rode in the van, as he was occupied providing P.O. Demarco with paperwork. § 87(2)(b) followed P.O. Demarco to the RMP, to ask why he had been stopped. P.O. Demarco explained why § 87(2)(b) had been stopped. § 87(2)(b) returned to his car and sat down. A few minutes later, P.O. Demarco handed § 87(2)(b) a summons.

§ 87(2)(b), § 87(2)(g)

#### *Identification of Subject Officers*

The summons issued to § 87(2)(b) bore P.O. Demarco's name and tax number. § 87(2)(b) identified P.O. Demarco as the subject on the original complaint form. According to the 30 Precinct roll call for tour 3, P.O. Demarco was assigned to patrol sector B with P.O. Nuñez in RMP #1344.

The occupants of the marked police van were not conclusively identified. Before P.O. Demarco and P.O. Nuñez were interviewed, it appeared possible that the officers in the van might also have been assigned to the 30 Precinct. P.O. Jessica Ferenczy of the 30 Precinct was interviewed on July 25, 2000, as she was the only female from the 30 Precinct to ride in a marked van with a male partner on the day of occurrence. However, P.O. Ferenczy and her partner responded to a burglary job at the time of occurrence, and were not involved in the car stop. Interviews of P.O. Demarco and P.O. Nuñez revealed that the officers in the van were not assigned to the 30 Precinct. Neither officer could identify the officers in the van. P.O. Demarco stated that the officers may have been assigned to the Patrol Borough Manhattan North Task Force (PBMN/TF).

Sgt. Dunleavy, ICO of PBMN/TF, stated during a telephone conversation that the task force was assigned to patrol the 30 Precinct on the day of occurrence. There were three male/female teams assigned to patrol on that day in marked vans, one of the females being black. Of the two remaining females, P.O. Alisa Buono and P.O. Monica Falango, P.O. Alisa Buono (as described by the sergeant) matched the description provided by § 87(2)(b) (white female with reddish-blond hair).

P.O. Buono was interviewed on September 25, 2000. She had no recollection of the incident; however, she effected a car stop one block away from the location of the incident, one half-hour past the time of the incident. § 87(2)(b), § 87(2)(g)

#### *Police Officer Statements*

P.O. Demarco's memo book contains a lengthy entry devoted to the incident. In his memo book, P.O. Demarco recorded a description of § 87(2)(b)'s vehicle, as well as accounts of the violations committed by the driver, the driver's refusal to stop, and the officers' approach of the stopped car. P.O. Demarco wrote that he and his partner "exited car and approached veh [sic] cautiously and rear suspects

began to move + duck in rear seats. Driver refused to open door and would not show his hands. Pass [sic] door was finally opened and driver ID'd [sic]. Driver stated, "I didn't see your lights or hear your commands.""

P.O. Demarco and was interviewed on July 25.

At approximately 6:30 p.m. on February 18, 2000, P.O. Demarco drove RMP#1344 northbound on Broadway. P.O. Demarco and his partner, P.O. Osvaldo Nuñez, watched as a tan Oldsmobile made an illegal U-turn ahead of them on 144<sup>th</sup> Street and Broadway, followed by a right turn on red at 145<sup>th</sup> Street.

P.O. Demarco followed the vehicle into 145<sup>th</sup> Street, turning on the lights and sirens. The vehicle did not stop. P.O. Demarco used the Public Address (PA) system to instruct the driver to pull over; however, the driver did not comply. The Oldsmobile finally pulled to a stop three quarters of the way down the block when the stop light at the corner of 145<sup>th</sup> Street and Amsterdam turned red for eastbound vehicles. P.O. Demarco stopped the RMP behind the Oldsmobile.

A marked police van pulled up in front of the Oldsmobile. P.O. Demarco did not know the two officers in the van - a white female officer and a Hispanic or black male officer. P.O. Demarco stated that the van was marked "MNTF" (Manhattan North Task Force). P.O. Demarco did not communicate with these officers. He believed that they had seen the vehicle make the illegal moves and drive away despite P.O. Demarco's signals to stop.

P.O. Demarco and his partner viewed the Oldsmobile as suspicious because of the driver's reckless driving and refusal to comply. This impression was strengthened by the fact that there seemed to be people moving around in the back seat when the Oldsmobile finally came to a stop.

P.O. Demarco and his partner stepped out of their RMP. The Task Force officers stepped out of the van. P.O. Demarco held his hand on his holster. He believed that P.O. Nunez's weapon was drawn, as were those of the Task Force officers, however he was unsure of this fact. The Task Force officers stood in front of the Oldsmobile. P.O. Demarco approached the driver's door, and pulled on the handle. The door did not open. P.O. Demarco instructed the driver to show his hands. The driver did not move. P.O. Demarco repeated his instructions, and tried to open the door.

P.O. Nunez managed to open the passenger's door. P.O. Demarco finally managed to open the driver's door. He saw the driver, an older male, the passenger, an older female, and two children in the backseat. He described the driver as "in a daze," did not look at him, and was delayed in responding to questions. When asked why he had not pulled over earlier, driver said he had not heard the sirens or calls. In response to the driver's questions, P.O. Demarco explained that he had been stopped for having made an illegal U-turn and dangerous turn. P.O. Demarco noticed that the Task Force officers left the scene during this conversation.

P.O. Demarco requested and obtained the driver's license and registration, then returned to the RMP with P.O. Nuñez. P.O. Demarco prepared a summons. He and his partner then walked back to the Oldsmobile. P.O. Demarco gave the driver the summons. P.O. Demarco walked back to the RMP and sat down. The driver of the Oldsmobile approached his window, and complained. He raised his voice slightly.

§ 87(2)(b)

The driver asked if P.O. Demarco would "squash" the summons. P.O. Demarco said no, but that he would be glad to speak to the driver's daughter if she gave him a call. The driver said, "See you in court."

The driver walked back to the Oldsmobile. Both vehicles left the scene.

P.O. Demarco stated that the driver was never frisked, and that none of the other occupants of the Oldsmobile stepped out of the vehicle at any time. He had no knowledge of the vehicle having been searched, let alone by the female Task Force officer.

P.O. Nuñez was interviewed on August 8, 2000. P.O. Nuñez did not make any entries in his memo book regarding the incident.

§ 87(2)(g)

P.O. Nuñez stated that he did have his weapon drawn when he approached § 87(2)(b)'s vehicle, pointed at the vehicle rather than of its occupants. As soon as he came within sight of the occupants, and realized that they did not present an immediate risk, P.O. Nuñez replaced his weapon in the holster. P.O. Nuñez could not recall whether or not P.O. Demarco drew his weapon.

P.O. Nuñez stated that none of the vehicle's doors opened on his side. P.O. Nuñez described the conversation between P.O. Demarco and § 87(2)(b) (concerning § 87(2)(b) daughter) as having taken place just before § 87(2)(b) was issued the summonses. P.O. Nuñez denied having frisked § 87(2)(b) or having seen his partner frisk § 87(2)(b).

As for the officers in the van, P.O. Nuñez stated that they did not actively participate in the car stop. The officers, according to P.O. Nuñez, began to advance toward the 30 Precinct officers and the vehicle, seeing that the officers were approaching cautiously. When P.O. Nuñez replaced his weapon in his holster, he "waved off" the officers from the van, signifying that their presence was no longer needed.

P.O. Jessica Ferenczy was interviewed on July 25, 2000. P.O. Ferenczy's memo book did not contain any entries relating to the incident. Her memo book indicates that she and her partner, P.O. Shea, reported to a burglary scene at § 87(2)(b) in Manhattan. P.O. Ferenczy entered a disposition for the job at 7:30 p.m., and took a break for her meal at 7:35 p.m.

P.O. Ferenczy stated during her interview that she and her partner had patrolled sector C until 4:10 p.m., at which time they drove to the scene of the burglary. She and her partner remained there until 7:30 p.m.

P.O. Alisa Buono was interviewed on September 25, 2000. P.O. Buono's memo book does not contain any entries concerning a car stop at 6:30 p.m. on 145<sup>th</sup> Street between Broadway and Amsterdam. However, P.O. Buono's memo book indicates that she and her partner, P.O. Eric Flood, effected a car stop at 7:06 p.m., eastbound on 145<sup>th</sup> Street at the intersection with Convent Avenue (one block away from the location of the incident). P.O. Buono and P.O. Flood stopped § 87(2)(b), who drove a 1988 gray Ford, § 87(2)(b). § 87(2)(b) received two summonses.

On February 18, 2000, P.O. Alisa Buono was assigned to patrol the 30 Precinct with P.O. Eric Flood in a marked van at 5:30 p.m., after having spent the first part of her tour in court.

P.O. Buono described P.O. Flood as a white male, approximately 6'1" tall, with short blond hair.

P.O. Buono could not recall what she and her partner did before they stopped § 87(2)(b)'s vehicle. P.O. Buono could not recall having observed any other officers conducting car stops on their way to 145<sup>th</sup> Street and Convent Avenue, let alone having assisted any officers effecting a stop. P.O. Buono was provided with additional information regarding § 87(2)(b)'s vehicle and the manner in which the stop was effected, however she repeated that she had no recollection of the incident.

P.O. Buono stated that, had they exited their van to assist other officers, they definitely would have placed a call over the radio or otherwise made a notation of the event. P.O. Buono conceded that she and her partner may have observed officers conducting a stop with their weapons drawn, pulled over, and been "waved away" by the officer, without her remembering the event.

### *Police Documents*

Few documents or notes were produced by the Police Department in connection with this case, aside from the entry in P.O. Demarco's memo book. The criminal summons issued to § 87(2)(b) (numbered § 87(2)(b)) § 87(2)(b)

§ 87(2)(b) P.O. Demarco signed the summons, but did not note a date and time of appearance for § 87(2)(b). On September 15, a call to the Manhattan Criminal Court Clerk revealed that the summons had never been submitted. As P.O. Demarco and P.O. Nuñez stated that they refused to withhold the summons, it is not known why the summons was not submitted. § 87(2)(g)

§ 87(2)(b) driving record in the Department of Motor Vehicles (DMV) database does not reflect this summons.

The 30 Precinct command log for February 18, 2000, indicates that § 87(2)(b) entered the stationhouse at 7:10 p.m. and left at 7:50 p.m. § 87(2)(b) came to the stationhouse to file a complaint against "4 [sic] police officers in uniform [who] stopped her vehicle at 145<sup>th</sup> and Amsterdam. When they got to her vehicle, officers had their guns out."

There was no sprint job associated to this incident.

*Subject Officers' CCRB Histories*

This is the first complaint filed against P.O. Demarco and P.O. Nuñez, who have both served as police officers for four years.

**Conclusions and Recommendations**

- A. Abuse of authority: P.O. Michael Demarco drew his gun. (PG 203-10)**
- B. Abuse of authority: P.O. Osvaldo Nuñez drew his gun. (PG 203-10)**
- C. Abuse of authority: Officers drew their guns. (PG 203-10)**

§ 87(2)(b) complained that the four officers who stopped her car approached with their guns drawn, and that the female officer riding in the van reached under the driver's seat to remove an object. § 87(2)(g)

P.O. Demarco and P.O. Nuñez were on a mail run when they observed § 87(2)(b) violations of traffic laws. The officers did not move to stop § 87(2)(b) until he made the illegal right turn onto 145<sup>th</sup> Street. § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g) § 87(2)(b) and § 87(2)(b) also corroborated the officers' statements regarding the movement in the back seat, as both stated that the children had watched the RMP during the pursuit. § 87(2)(b), § 87(2)(g)

- D. Abuse of authority: An officer searched a vehicle in which § 87(2)(b) was an occupant.**

§ 87(2)(g)

According to § 87(2)(b) who was the only individual interviewed to describe the search. § 87(2)(b) stated that the female officer, who stood near the driver's door, reached under the car seat after § 87(2)(b) had exited the vehicle, and pulled out a stick-like item. § 87(2)(b), § 87(2)(g)

§ 87(2)(b) during his interview, stated that he kept a tire iron under his seat. § 87(2)(g)

§ 87(2)(g) [REDACTED]  
[REDACTED] According to § 87(2)(b) [REDACTED] the female officer did not search the vehicle further.

§ 87(2)(b), § 87(2)(g) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: